

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JOSEPH DAVIS

PLAINTIFF

VS.

CIVIL ACTION NO. 3:18-CV-433-WHB-JCG

CITY OF WAYNESBORO, MISSISSIPPI; ET AL

DEFENDANTS

**RULE 12(b)(5) MOTION for RELIEF FOR INSUFFICIENT SERVICE OF PROCESS
AS TO ALBERT BUSBY with AMENDED CERTIFICATE OF SERVICE**

1) Comes now Albert Busby, appearing specially and for a limited purpose, by and through Counsel, and requests this Court dismiss this case as to individual Defendant Albert Busby pursuant to F. R. Civ. P 12(b)(5) due to insufficiency of service of process and/or due to invalid process and strike the existing process return at docket #8 from the record as to individual Defendant Albert Busby.

2) This Motion is based on the allegations of the Complaint, matters reflected in the Court file, applicable law and Exhibit A to this Motion of the purported executed summons with return for purported service of process on Albert Busby. Albert Busby has not been personally served with process according to law. There is no authority for a City Clerk to accept personal service of process for an individual Defendant.

3) Service of process as to individual Defendant Albert Busby is insufficient as the attempted and purported service of process as to individual Defendant Albert Busby was not served in accord with F. R. Civ. P. 4 on him individually or by any other valid method. Plaintiff by and through a process server left a copy of a summons issued in this cause with a City of Waynesboro Clerk. The

return lists the City Clerk as the person who the process was given to. The Return has the words “by law” stricken out. The Return is not executed in the section for personal service of process as that section is blank. The only the section of the return executed is for service “on behalf of an organization.” An individual Defendant is not an organization. Albert Busby was not personally served. The return actually states only that an organization was served.

4) All other Rule 12 defenses and all affirmative defenses not asserted herein are reserved and none waived. The right to file an Answer is reserved and not waived.

Respectfully submitted, this the 12th day of September, 2018.

/s/ Katherine S. Kerby
KATHERINE S. KERBY, MSB # 3584
Albert Busby, Defendant

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, Katherine S. Kerby, attorney for Albert Busby hereby certify that I have this day served via the ECF system the foregoing to all counsel of record for all parties that have entered an appearance to date including to Louis H. Watson, Jr. with email address of louis@watsonnorris.com and Nick Norris with email address of nick@watsonnorris.com as Attorneys for Plaintiff and William R. Allen as Attorney for the City of Waynesboro, Mississippi at wallen@aabalegal.com.

This the 12th day of September, 2018.

/s/ Katherine S. Kerby
KATHERINE S. KERBY